



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 31, 1994

Honorable Linda Shoemaker Lowrey  
Criminal District Attorney  
121st Judicial District  
Yoakum County  
P.O. Box 359  
Plains, Texas 79355

Letter Opinion No. 94-017

Re: Whether, under chapter 2257 of the Government Code, a depository institution may secure a deposit of public funds with Small Business Administration Certificates (ID# 21129)

Dear Ms. Lowrey:

You have asked this office to determine whether, under chapter 2257 of the Government Code, a depository institution may secure a deposit of public funds with Small Business Administration Certificates ("SBA certificates"). You state that the depository institution (the "depository") for the City of Denver City has pledged SBA certificates as collateral. You explain that "[a] portion of the SBA certificates are guaranteed by the full faith and credit of the United States Government," but a portion is unguaranteed. You stipulate, however, that the depository does not purchase any unguaranteed portion of the SBA certificates.

Section 105.031(a) of the Local Government Code specifies that a bank<sup>1</sup> or savings association<sup>2</sup> that desires to qualify as a municipal depository<sup>3</sup> must, no later than

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<sup>1</sup>Section 105.001(1) of the Local Government Code defines "bank" as "a state bank or a national bank domiciled in this state." See Local Gov't Code § 105.001(11) (defining "national bank"), (13) (defining "state bank").

<sup>2</sup>Section 105.001(12) of the Local Government Code defines "savings association" as "a state savings association or a federal savings association domiciled in this state." See *id.* § 105.001(10) (defining "federal savings association"), (15) (defining "state savings association").

<sup>3</sup>A "depository" is the bank, credit union, or savings association that a municipality selects to provide depository services. *Id.* § 105.001(4); see also *id.* § 105.001(2) (defining "credit union").

five days before the term of the depository services contract<sup>4</sup> commences, provide security for the funds that the municipality will deposit pursuant to the terms of the depository services contract. Section 105.034(a)(5) of the Local Government Code requires a municipal depository, among other things, "to provide and maintain security at the level" the Public Funds Collateral Act, chapter 2257 of the Government Code, requires.<sup>5</sup>

Section 2257.021 of the Government Code requires a depository to secure a deposit of public funds by eligible security to the extent and in the manner that chapter 2257 requires. An investment security, defined as "an obligation that in the opinion of the attorney general of the United States is a general obligation of the United States and backed by its full faith and credit," Gov't Code § 2257.002(6)(A), constitutes eligible security, *see id.* § 2257.002(5)(B). A security in which a public entity may invest under chapter 2256, subchapter A of the Government Code, including an obligation of the United States or its instrumentalities, also constitutes eligible security.<sup>6</sup> *Id.* §§ 2256.006(1), 2257.002(5)(B), (6)(C). The total value of eligible security to secure a deposit of public funds must be in an amount calculated pursuant to section 2257.022. The public entity depositing the funds must determine, in accordance with its approved written policy, if an investment security is eligible to secure deposits of public funds. *Id.* § 2257.023(a).

You have stated that the SBA certificates Denver City's depository has put up to secure the municipality's deposit are wholly backed by the full faith and credit of the United States. We therefore assume that the SBA certificates are general obligations of the United States. However, section 2257.023(a) of the Government Code requires the municipality to determine in the first instance whether, in accordance with its approved

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<sup>4</sup>A "depository services contract" is a contract between a municipality and its depository containing terms and conditions relating to the depository's receipt and disbursement of municipal funds.

<sup>5</sup>The Seventy-third Legislature repealed V.T.C.S. article 2529b-1, about which you specifically ask. *See* Acts 1993, 73d Leg., ch. 268, § 46(1); *infra* note 7. The same legislature also amended section 105.034(5) of the Local Government Code to refer explicitly to the Public Funds Collateral Act, V.T.C.S. article 2529d. *See id.* ch. 234, § 1. Additionally, the Seventy-third Legislature nonsubstantively codified and repealed V.T.C.S. article 2529d. *See id.* ch. 268, §§ 1, 46.


<sup>6</sup>You do not inform us as to whether the SBA certificates would constitute any other kind of investment in which a public entity may invest under chapter 2256, subchapter A of the Government Code.

written policy, the SBA certificates are eligible to secure deposits of the municipality's funds.<sup>7</sup> This office cannot say as a matter of law that the SBA certificates about which you ask are investment securities that constitute eligible security under the Public Funds Collateral Act.

### S U M M A R Y

Pursuant to chapter 2257 of the Government Code, a municipal depository institution may secure a deposit of public funds with, among other things, "an obligation that in the opinion of the attorney general of the United States is a general obligation of the United States and backed by its full faith and credit" or an obligation of the United States or its instrumentalities. Whether a particular investment security is eligible to secure a deposit of public funds is a question that the municipality must determine in the first instance.

Yours very truly,

  
Kimberly K. Oltrogge  
Assistant Attorney General  
Opinion Committee

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<sup>7</sup>You also indicate that the SBA certificates are "readily marketable on a daily basis and . . . have a declining principal balance." Under V.T.C.S. article 2529b-1, which the Seventy-third Legislature repealed, *see supra* note 5, a government security was "eligible and lawful security for all deposits of public funds of the State of Texas and any public agency to the extent of the market value thereof." V.T.C.S. art. 2529b-1, §§ 1(b), 2, *repealed by* Acts 1993, 73d Leg., ch. 268, § 46(1). Article 2529b-1, section 1(a) defined the term "government securities" to include, among other things, "direct obligations of the United States of America, obligations which in the opinion of the attorney general of the United States are general obligations of the United States and backed by its full faith and credit, obligations guaranteed by the United States of America, evidence of indebtedness of or participation certificates guaranteed by [certain federal banks] including . . . New Housing Authority Bonds and Project Notes fully secured by contracts with the United States of America provided such terms shall not include any obligation with a *declining principal balance*." (Emphasis added.) Regardless of how this office might have interpreted the definition of "government securities" in the context of article 2529b-1, *see* Attorney General Opinion JM-1033 (1989) at 6, we no longer must consider whether an obligation that is backed by the full faith and credit of the United States with a declining value is a government security that a depository institution may use to secure a deposit of public funds.